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COMMONWEALTH of VIRGINIA

James S. Gilmore, III
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August 26, 1994

Supreme Court Building
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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Northwest
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference for 0+LATA Calls
CC Docket # 92-77

Dear Mr. Secretary:

Pursuant to sections 1.415 and 1.419 of the Commission's Rules, I am submitting the following comments in opposition to the issuance of the proposed Billed Part Preference ("BPP") Rule, on behalf of the Commonwealth of Virginia.

In the Commonwealth's opinion, this rule is both unnecessary from a regulatory standpoint and is unduly costly to consumers, as it will provide little tangible benefit to them, in terms of improved long distance telephone service while simultaneously raising the cost to consumers of obtaining that service.

There are several reasons for the Commonwealth's opposition to this rule. First, estimates of the cost of installing this additional equipment range from \$500 million to more than \$2 billion. Whether one accepts the low or the high figure as accurate, this is a substantial capital cost which will be passed on to consumers in the form of higher long distance telephone rates, without materially improving the quality of their telephone service.

Second, to the extent that customers are already able to "dial around" a blocked line this rule is unnecessary. As an example, the Commonwealth purchases its long distance telephone service from MCI. At present, all that an MCI customer must do in order to gain access to AT&T is to dial an 800 number and ask the operator to bill the customer accordingly. Should the FCC's proposed rule be adopted, rather than dialing the 800 number, that customer would still have to dial the 4 or 5 digit access code. It is not worth \$500 million to \$2 billion to spare a caller to "effort" of dialing 3 or 4 extra digits.

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Third, AT&T and other long distance providers (hereafter collectively referred to as "AT&T") are the victims of the "crime" to the extent that it is being denied the opportunity to provide service to its customers who are illegally being prevented from selecting their own long distance company. The FCC should not be compelling AT&T to pay for a non-Bell local phone company violating federal law or federal regulations. The FCC should be taking appropriate administrative or legal action against the local non-Bell coin phone companies and hotel chains.

Fourth, to the extent that "blockading" is a problem today, it may well disappear as a problem in a few years due to new technology, the wider availability of cordless pocket telephones and other devices that will enable callers to by-pass ground wire systems altogether. To that extent, it would be a needless waste of AT&T's capital and technological resources to compel the installation of additional equipment that may be technologically obsolete in just a few years. Those resources could be spent, far better, on keeping long distance telephone costs down.

Finally, other regulatory, or legislative, options are available to the FCC that would not impose additional financial burdens on consumers or on AT&T. First, the FCC should take whatever legal action is required to enforce TOCSIA. If additional enforcement authority is required from Congress then the FCC should seek it, instead of passing the buck to consumers or to AT&T.

Second, the FCC might consider issuing a rule prohibiting a hotel, or non-Bell local phone company from billing a customer for long distance telephone calls made on an illegally blockaded line. This would stop the problem immediately. (There is legislative precedent for this approach. The Federal Trade Commission Act was amended several years ago to stop the problem of consumers being billed for unordered merchandise: Congress simply declared that such merchandise was a gift to the consumer. The problem disappeared, literally, over night. Rather than sticking AT&T and consumers with a \$1 billion bill, the FCC should consider this approach, either by regulation or, if necessary, by legislation.)

Third, the FCC might consider requiring AT&T to include a notice with all telephone bills advising consumers that they had a right to insist on access to the long distance carrier of their choice and that they should demand compliance from hotels, non-Bell local phone companies, et cetera. Raising public awareness should go a long way toward eliminating this problem. (Why MCI, Sprint, and other competing long distance carriers are not already doing this, out of their own self interest is unknown and is, in any event, not the responsibility of consumers.)

Fourth, the National Association of State Utility Consumer Advocates pointed out in its August 1, 1994 Comments to the Commission that "many [formerly Bell owned] pay telephones are now mislabeled as to the pre-subscribed carrier. Customers using these pay phones cannot

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determine who the pre-subscribed carrier is". (NASUCA Comments at p. 4.) This is a legitimate concern. In the Commonwealth's view, the most effective, and least costly to the consumer method for combatting this problem would be to 1) require that all pay telephones be manufactured with a permanent notice affixed to the telephone of the customer's option to use another long distance carrier and 2) to provide for substantial fines, of perhaps a \$1,000 per telephone, for each violation. A vigorous enforcement program on the part of the FCC would rapidly eliminate these blockading violations.

A parallel approach would be to amend TOCSIA to clearly authorize consumer standing to file suit against local telephone companies (or hotel chains) who violate the Act, with the imposition of statutory penalties and the awarding of legal fees. There are numerous consumer groups who would readily file such cases and the threat of costly litigation would, in my view, deter most, if not all, violations from recurring.

Finally, the Commission ought to consider referring the matter to the Department of Justice for whatever legal action is required to compel compliance with TOCSIA.

Very truly yours,

A handwritten signature in black ink, reading "James S. Gilmore, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James S. Gilmore, III
Attorney General

FCC.BPP